



**Superior Court of California
County of San Diego
PO BOX 122724
SAN DIEGO CA 92112-2724**

June 21, 2005

**PROPOSED CHANGES TO
THE SAN DIEGO SUPERIOR COURT RULES
TO BECOME EFFECTIVE JANUARY 1, 2006**

Pursuant to rule 981 of the California Rules of Court, proposed changes to San Diego Superior Court local rules with an effective date of January 1, 2006, have been approved by the Court in principle and are hereby submitted to the bar for comment.

Any comments or concerns regarding these proposed changes should be forwarded to Rules Committee Chair Judge Lisa Guy-Schall c/o Darlene Dornan, Director of Legal Services, P.O. Box 122724, San Diego, CA 92112, prior to August 5, 2006.

RULES RENUMBERING

All local rules will be renumbered in a manner that will allow for addition of rules within a particular chapter without the necessity of renumbering all subsequent rules. The new rule numbers will consist of the division number, followed by chapter number, followed by rule number, separated by decimal points. For example, current rule 2.43 will become rule 2.5.1 because it is the first rule in chapter 5 of Division 2. A table cross-referencing the former rule and new rule numbers will be published in the January 2006 court rules.

REWORDING AND DELETIONS

All local rules will be reviewed for consistency and conformity with the California Rules of Court. Thus, it is the Court's intent to replace "shall" with "must," or another term, when appropriate. As defined by the Rules of Court, "shall" and "must" are mandatory. "May" is permissive, and "should" is a nonbinding recommendation. "Will" indicates a future contingency or course of events, but does not signify a mandatory duty. In addition, certain rules that are duplicative of the Rules of Court or statutes are being deleted.

DIVISION I. GENERAL AND ADMINISTRATIVE

Rule 1.7 will be rewritten as follows:

Rule 1.7 Departments, Divisions of the Court, and Venue

A. The court consists of all the departments and divisions wherever they may be located and whatever their function. These include all facilities located within the North County, East County, South County, and Central Divisions. The hours of operation shall be published in the professional and legal newspapers in the county and posted in each courthouse.

B. In addition to the trial departments of each division, there shall be a presiding or supervising department and other specialized departments as determined by the presiding judge. The supervising judge at each location shall be responsible for the administrative and calendar operations of the departments located there and for assignment of proceedings in those cases that are filed there.

C. Except as set forth otherwise below or elsewhere provided in these rules, venue for all cases shall be according to the zip codes found in Appendix I-A.

D. The following matters must be filed in the Central Division:

1. Matters now heard on the mental health calendar of the court, including all proceedings under the Lanterman-Petris-Short Act, except permanent conservatorships;

2. Appeals to the appellate division;

3. The return and filing of indictments;

4. False claims actions; and

5. Construction defect cases. If a case primarily involves construction defect claims, the case shall be filed in the Central Division (Hall of Justice), and will be assigned to a judge designated to hear construction defect cases.

E. Venue for CEQA Cases

Venue for CEQA (California Environmental Quality Act) cases is divided into two divisions, Central and North County. The East and South Divisions are included in the Central Division for purposes CEQA cases only. Original petitions must show the proper venue and be filed in the appropriate court according to zip code as set forth in Appendix 1-A and in accordance with this rule.

F. Venue for Criminal Cases

1. Generally: Except as otherwise set forth in these rules, the People shall file all criminal cases in the division in which the crime is alleged to have occurred, in accordance with the zip codes found in Appendix I-A. The People may make written application to the Supervising Judge of the division in which the case would be filed in accordance with Appendix I-A setting forth good cause why that case should not be filed in accordance with this rule.

2. Death Penalty Cases: Death penalty cases shall be filed in the Central, East County and North County Divisions in accordance with the zip codes found in Appendix 1-A. The South County Division is included in the Central Division for purposes of venue in death penalty cases only.

3. City of Coronado and City of Del Mar Cases: Cases arising in the City of Coronado shall be filed in the South County Division, and cases arising in the City of Del Mar shall be filed in the North County Division.

G. Venue for Adult Traffic/Minor Offense Cases

Except as set forth in Vehicle Code section 40502, subdivision (b), venue for traffic and minor offense cases charged against adults shall be in accordance with the zip code list set forth in Appendix I-A, except that cases arising in the City of Coronado shall be filed in the South County Division, and cases arising in the City of Del Mar shall be filed in the North County Division.

H. Venue for Juvenile Traffic/Minor Offense Cases

Venue for traffic and minor offense violations charged against juveniles (under 18 years of age) shall be in the Juvenile Court of the Central Division, except the following categories of citations will be accepted for filing in the Adult Traffic and Minor Offense Departments of the respective Court Divisions:

1. All Vehicle Code infraction citations issued to juveniles (under 18 years) that do not involve drugs or alcohol;
2. All Municipal Code and Local Ordinances that involve driving or operation of a motor vehicle;
3. All appeals of parking citations issued to juveniles (under 18 years) and minors (18-21 years);
4. All infraction citations issued to minors (18-21 years) for Business and Profession Code violations involving minor in possession and related alcohol and drug charges; and
5. Citations issued to minors (18-21 years) for Vehicle Code, section 23140(a) (person under 21 years, driving under the influence of alcohol). See exception noted below.

Exception: Citations issued to minors (18-21 years) for Vehicle Code, section 23140(a) in the Central Division will be accepted for filing in the Criminal Division downtown.

I. Venue for Juvenile Delinquency Cases

Venue for all delinquency cases initiated by petition shall be in the Juvenile Court of the Central Division, except as otherwise set forth in these rules.

J. Venue for Juvenile Dependency Cases

Juvenile dependency cases shall be filed in the Central, North County, South County and East County Divisions in accordance with the zip code list that is as agreed upon by the Juvenile Court, Child Welfare Services, and County Counsel (in contrast to Appendix I-A). The current list shall be maintained by the Presiding Judge of the Juvenile Court.

K. Venue for Family, Domestic Violence and Child Support Cases

Venue in family law, domestic violence and child support cases shall be governed by rules 5.2, 5.9 and 5.57 of Division 5 – Family Law, of these Local Rules.

L. Venue for Probate Cases

Venue in probate cases shall be governed by rule 4.2 of Division 4, Section 1, Probate, of these local rules.

M. Transfer of Actions

Any action or proceeding may, for good cause shown on motion of a party, and after hearing, be transferred to a different division. Motions and hearings on such transfer must be heard in the court where the action or proceeding is pending. In ruling on such a motion the judge presiding may, in his or her discretion, deny transfer of a case that has been filed in a court not authorized by subsection C above.

The presiding judge, supervising judge, or designee (including any judge assigned for all purposes to a case), may order a transfer at any time without motion or hearing in his or her discretion for reasons stated in the order to transfer. Although transfer will ordinarily be ordered in civil matters at the time of the case management conference or in criminal matters at the time of arraignment, such transfer may be ordered at any time at the discretion of any of the judges set forth above. If the order to transfer is made without a hearing or at a time other than a hearing, any party shall be entitled to be heard concerning such transfer if a request for hearing is made to the judge who ordered the transfer within 10 days after notice of transfer.

Whenever, in the discretion of the presiding judge or his or her designee, the criminal calendar in any division has become so congested so as to jeopardize the right of a party to a speedy trial or to interfere with the proper handling of the judicial business in that division, or for security or calendar management reasons, the judge may order those cases that are to be filed in that division be filed in a different division.

Rule 1.11 will be rewritten as follows:

Rule 1.11 Jury Lists

The jury master list for the Central Division shall be comprised of those jurors residing in any of the filing districts as set forth in Appendix I-A. The jury master list for the East, North and South County Divisions shall be comprised of those jurors residing in the district as set forth in the venue column in Appendix I-A that corresponds with the division in which the juror lives.

Jurors shall be allowed, in the sound discretion of the court, to transfer their service to any court location regardless of their residence if doing so would make it more convenient for the juror. In addition, jurors may appear for service up to two weeks prior to and two weeks after the date on the jury summons.

The jury master list shall be drawn so that all persons have an equal chance of being selected regardless of their place of residence and so that all persons who have not served shall be drawn before any who have completed service in the past 12 months.

DIVISION II. CIVIL

PREAMBLE, GENERAL, DUTIES OWED IN PROCEEDINGS BEFORE THE COURT, and DUTIES OWED TO MEMBERS OF THE BAR are being moved from the Civil Division to Division I - General and Administrative.

Rule 2.12 Jury Fees

When setting a case for trial, the court will ~~determine which party demands a jury, who will post fees, and propose a deadline for the deposit of the fees~~ **follow C.C.P. § 631.** The jury fee deposit shall be accompanied by a Notice of Jury Fee Deposit. Failure to deposit the fees **pursuant to section 631 is a waiver of the right to jury trial and, unless promptly cured, will result in dismissal of the jury or no jury will be empaneled, whichever is appropriate.** ~~on or before the date agreed upon may constitute a waiver of the right to a jury or result in imposition of sanctions.~~ **See *Adams v. Crawford* (1897) 116 Cal. 495; *Rose v. Subway Terminal Corp.* (1934) 139 Cal. App. 67.**

Rule 2.14 Structured/Conditional Settlements, Taking Matters Off Calendar

Upon conditional settlement of a case, **parties shall notify the court as follows:**

and, the parties are encouraged to entitle the settlement agreement "Conditional Settlement and Stipulation for Dismissal" and include a stipulation for the immediate dismissal of the action without prejudice, reserving the court's power to set aside the dismissal and order entry of judgment upon a showing of default in the specified terms of the agreement. Exceptions may be advisable in those cases where a lump sum payment is made to a third party who thereafter assumes responsibility for future payments. The court reserves jurisdiction to enter a dismissal with prejudice following the entry of a dismissal without prejudice upon request by the appropriate party.

a. The parties are required to give notice to the court whether the conditional settlement either 1) contains a stipulation to immediate dismissal with a reservation of jurisdiction to set aside the dismissal and enter judgment upon nonperformance or 2) does not contain such a stipulation and requires dismissal only after full performance of the settlement terms.

b. Removal **of pending matters** from any **the** court calendar may be effected by telephone, in the discretion of the court, if:

1. There are no unrepresented litigants; **and**,
2. All unserved parties or parties not participating in the settlement will be dismissed. ; ~~and~~
- ~~— 3. All parties agree that the case has been settled in its entirety and that dismissals or judgments will be filed within 45 days.~~

Trials may be taken off calendar by telephone if all of the above conditions are met and the trial date is not more than 365 days after the date the original complaint was filed. Otherwise, the parties must appear ex parte.

Rule 2.48 Confidentiality Agreements, Protective Orders, Sealed Documents

It is the policy of the court that confidentiality agreements and protective orders are disfavored and should be recognized and approved by the court only when there is a genuine trade secret or privilege to be protected.

~~— Such agreements will not be recognized or approved by the court absent a particularized showing (document by document) that secrecy is in the public interest, the proponent has a cognizable interest in the material (e.g., the material contains trade secrets, privileged information, or is otherwise protected by law from disclosure), and that disclosure would cause serious harm.~~

~~— Sealed records may be viewed only by parties and their attorneys of record, unless the order sealing the records states otherwise. Sealed records may not be copied by persons authorized to view them, absent a court order to the contrary.~~

- (a) **When the court is requested to approve a confidentiality agreement that involves documents submitted to or filed with the court, such requests shall be made pursuant to rules 243.1 – 243.4 of the California Rules of Court.**
- (b) **To the extent any request to seal court records falls outside the scope of rules 243.1 – 243.4 of the California Rules of Court and is not covered by a specific statute, rules 243.1 – 243.4 shall be followed as closely as is practicable.**

DIVISION III. CRIMINAL

Rule 3.1 Filing of Complaints

~~Each arraignment department shall provide prosecuting agencies with specific information regarding the timely filing of complaints.~~

Rule 3.2 Arraignment Options on Misdemeanors and Infractions

Attorneys appearing in propria persona or who are retained to represent defendants who are not in custody and who are charged with misdemeanors or infractions may, in lieu of a court appearance, arraign matters informally if the attorney, as authorized by the defendant, enters a plea of not guilty and waives time for trial. The clerk will assign settlement conference, trial readiness conference, and trial dates as directed by the court.

A. Counter Arraignments: The attorney must personally appear in the clerk's office.

~~**B. Telephone Arraignments:** The attorney must personally telephone the clerk at the number provided by the court.~~

C. Fax Arraignments: Forms and rules governing this procedure may be obtained from the clerk's office or on the court's website.

D. Exceptions: These arraignment options are not available for defendants charged with child abuse or domestic violence countywide or cases prosecuted by consumer fraud and code enforcement divisions of the San Diego City Attorney's Office.

Rule 3. (New No.) Failures to Appear in Misdemeanor "Notify Letter" Cases

If a defendant fails to appear in court for arraignment after a notify letter has been issued by the prosecutor in a misdemeanor case, the court will set a date 90 days in the future by which time the prosecutor shall decide if he or she will file an Affidavit in Support of Arrest Warrant. If the prosecutor files an affidavit within this 90-day period, the case will be referred to the designated criminal department for issuance of a warrant. If no affidavit is filed within 90 days, the case shall be dismissed for lack of prosecution unless the prosecutor petitions the court within this 90-day period and shows good cause for an extension of time to either send a notify letter or to file an Affidavit in Support of Arrest Warrant.

This rule does not apply to domestic violence, drug court and Penal Code section 1210, et seq., cases.

Rule 3.3 Continuances

~~Continuances of hearings shall be granted only upon a showing of good cause and in accordance with the procedural requirements of section 1050 of the Penal Code.~~

Rule 3.717 Prohibition Against Ex Parte Contacts

The court will not entertain or engage in any ex parte communications with any party or a party's attorney regarding the merits of a pending criminal case, a motion, a writ petition for writ of habeas corpus, or an extraordinary writ ~~or any stay requested therein~~. However, a party or a party's attorney and the court's ~~research~~ staff attorney may discuss procedural matters ex parte.

C. Suppression Motions (Penal Code section 1538.5):

1. Defendant shall attach a copy of the current complaint, information, or indictment to the motion.

~~4.~~ 2. If relevant to the motion, the defendant shall attach to the motion legible copies of the search warrant, affidavit in support of the warrant, and receipt and inventory of property.

~~b.~~ **3. b.** The motion shall include a list of specific items to be suppressed. A general request to suppress "all items seized" is not sufficient and may be deemed an abandonment of the motion. Only listed items will be considered by the court for suppression or return, unless any newly identified item could not reasonably be specified prior to the hearing.

~~2.~~ **4. Motions Made Following a at Felony Preliminary Examination.**
Motions made at a felony preliminary examination must comply with Penal Code section 1538.5(f). Defendant may, but is not required to, file a reply brief. Proofs of service must be filed by the date of the hearing.

~~3.~~ **5. Motions Made in All Other Felony and Misdemeanor Cases.**

a. Defendant must specify the precise grounds for suppression of the evidence, including the inadequacy of any justification for the search and seizure. If defendant's motion alleges the lack of a warrant as the sole basis for suppression, any opposition filed by the People should specify the justification for the warrantless search. The defendant should then file a reply specifying the inadequacies of the justification. However, absent a reply, the prosecution retains the burden of proof to establish its justification. The reply brief must be filed and personally served at least two court days prior to the hearing. The raising of new issues in the reply may constitute good cause for continuance to permit the prosecution to prepare for the hearing.

~~4.a~~ **b.** The **A motion brought following a felony preliminary examination** shall state whether the party stipulates to the preliminary examination transcript, whether the motion was raised at the preliminary examination, and, if so, shall specify what factual findings and legal conclusions were made by the magistrate. ~~b.~~ Failure to indicate whether or not the party stipulates to the preliminary examination transcript will be deemed a stipulation to the admission of the transcript.

Rule 3.15 Format of Habeas Corpus Petitions

~~— Petitions for writ of habeas corpus filed in propria persona shall be submitted on the form approved by the Judicial Council pursuant to the California Rules of Court, rule 4.551(a). Petitions that are not in compliance with this rule will not be accepted for filing, unless good cause for noncompliance is shown.~~

Rule 3.18 Appointment of Minors

~~— In any case in which a prosecution is initiated under the Penal Code arising from neglect or abuse of a child, the court shall appoint a guardian ad litem. The guardian ad litem for the child may be an attorney or a court-appointed special advocate (CASA).~~

DIVISION IV - PROBATE

Rule 4.6 Caption of Petitions

- C. The Probate alpha-numerical designation (1A, etc., or such similar system used by the Probate Court) will be assigned at the time the petition is set for hearing. The designation must be stated directly below the case number in the caption of all subsequently filed pleadings related to that petition.**

Rule 4.7 Filing Documents for Calendared Matters

- B. In order to be considered at the calendared hearing, documents filed after the calendared petition must be filed directly with Probate Services no later than 42:00**

~~noon, two~~ **4:30 pm, three** court days prior to the hearing. Any document filed after the deadline will be considered "late" and may will not be reviewed **by Probate Examining** for the calendared hearing. No documents will be accepted for filing after 12:00 ~~noon,~~ the day of the hearing.

Rule 4.18 Proof of Service

~~C. To determine the proper procedure, counsel are urged to refer to the Probate Code provisions applicable to the petition being filed.~~ **Any person requesting that the court surcharge, suspend or remove a conservator, guardian, trustee, or personal representative, or objects to an account by such fiduciary must file proof of service of the Notice to Surety required by Probate Code 1213 prior to hearing on their Petition or Objection.**

Rule 4.26 Signature of Judge Preparation of Orders

(A) An order or document on a matter requiring the signature of the judge must be submitted to the Probate Business Office for review before being presented to the judge. Orders may be submitted on or after the hearing date.

(B) (1) Counsel for the moving party must prepare a formal order unless the Court orders the other party, if any, to do so. (The party preparing the original proposed order is referred to in this Rule as the "preparing party".)

(2) The order must be prepared and submitted to the other party, if any, (referred to in this rule as the "responding party") within 5 calendar days of the hearing. The preparing party must forward it to the responding party for approval as to form and content unless the Court authorized the preparer to submit it directly to the Court. The responding party will have 10 calendar days from the date the proposed order was mailed to review the order and either sign it as prepared or notify the preparing party in writing of objections to its content.

(3) If the responding party fails to timely approve or object to the order, the preparing party shall send a second letter to the responding party stating that the proposed order will be submitted to the Court for signature if no written response to the order is received within 5 calendar days of the second letter. If there is no written response to the second letter, the preparing party shall submit the following to the Court clerk: (1) the proposed order; (2) copies of both letters to the responding party; and, (3) a declaration explaining the circumstances and requesting that the proposed order be signed by the judicial officer.

If the responding party timely objects to the proposed order and the parties cannot thereafter agree on the language of the order, the Court will be guided by the transcript of the hearing. Within 10 calendar days of receiving written objections to the proposed order, the preparing party shall request and advance the cost for a transcript. Each party will be responsible for one-half of the cost of the transcript. Upon receipt, a copy of the transcript and a copy of the bill will be immediately provided to the responding party. No later than 25 calendar days after delivery of the copy of the transcript to the responding party (regardless of whether the copy is delivered personally or by mail), the parties will exchange new proposed orders based on the transcript. If the parties still cannot agree on the language of the order, then no later than 45 calendar days after delivery of the copy of the transcript to the responding party, the preparing party will submit the following to the judicial officer who made the ruling: (1) both parties' final proposed orders; (2) a copy of the transcript; (3) all written objections from all parties; and (4) a clear explanation as to how the final proposed orders differ. Copies of all papers submitted to the Court will

be immediately served on the responding party. The proposed order accepted by the judicial officer will be executed and filed. Failure to comply with this rule may subject a party or the attorney to sanctions pursuant to CCP 177.5

Rule 4.27 Material to be Included in Probate Orders

H. The Court will not hear any subsequently filed petition in a case where the order previously made has not been submitted and approved pursuant to the requirements of 4.26 and 4.27(a)-(g)

Rule 4.30 Application for Ex Parte Orders—Generally

D. **(1)** The Court requires 24 hours notice to all parties entitled to notice. Every ex parte application must be accompanied by a written declaration of such notice or the reason it was not given. For specific requirements, consult department and local rules concerning specific petition which is to be determined. **regarding notice that states:**

- a. **The notice given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected; or**
- b. **Why notice should not be required.**

(2) An ex parte application must also include a declaration in support of the application and a memorandum of points and authorities.

Rule 4.35 Tentative Rulings

At the option of the Judicial Officer sitting in Probate, tentative law and motion rulings will be made available in accordance with local rule 2.19. **For motions filed in Dept PC of the Central Probate Division,** tentative rulings will be made available by telephone at 619-531-3690 and on the **probate** court's website at www.sandiego.courts.ca.gov/superior/online/telerule.html **(click on "tentative rulings" from the Probate webpage)** by 3:00 p.m. on the date the motion is set. **on the Friday before the hearing. For motions filed in the North County Division, tentative rulings will be made available at the time of the hearing.**

Rule 4.38 ~~Preference Re: Letters of Special Administration~~ This section left intentionally blank.

~~—In making the appointment of a special administrator, preference is given to the person entitled to letters testamentary or of administration, but if it appears that a bona fide contest exists, the court may consider the advisability of appointing a neutral person or corporation fiduciary as special administrator.~~

Rule 4.38A Letters Issued in Decedent's Estates

D. Petitioners must file the report required by Probate Code Section 12200 prior to the review hearing. Failure to file the report may result in sanctions pursuant to CCP 177.5 and/or a reduction in the statutory fees. **Upon failure to comply with Probate Code 12200 the Court shall consider reduction of statutory compensation pursuant to Probate Code 12205 at the time of Final Distribution, or at any hearing on an allowance for compensation. The Court will consider declarations as to why the delay, or failure to comply with this rule, was beyond the control of the party seeking compensation, or was in the best interest of the estate. The Court will consider the failure to file such a declaration in determining whether to reduce compensation.**

Rule 4.39 Allegations in Petitions Re: Beneficiaries

In all petitions pertaining to the administrative duties of a fiduciary:

- A.** The nominated trustee of a trust created by a will must be ~~listed as a beneficiary~~ **included in the list of beneficiaries and identified as the trustee on that list.** (See also rule 4.23.)

The street address and relationship of the proposed personal representative **to the decedent** must appear in the petition.

Rule 4.46 Bonding of Personal Representatives

- A.** When a bond is required, the minimum bond that will be set for a resident and non-resident personal representative upon initial appointment will be \$10,000. **\$20,000.**

Rule 4.47 Declinations and Consents to Serve

- B.** If a petition for issuance of letters to one or more personal representatives is filed and any of the named personal representatives for whom letters are sought is not a petitioner, then a consent to act, signed by each such non-petitioning personal representative must be filed with the court. **If a consent to act cannot be obtained, the petition must state facts regarding both the efforts to obtain consent and the results of those efforts.**

Rule 4.60A Petition for Authority to Retain an Attorney

- C.** The Probate Court considers a reasonable fee to be 15% before ADR and 25% after ADR.

Rule 4.60B Joinder in Pleadings

A. Any interested party in an action before the Probate Court may indicate his or her endorsement of all opinions and positions taken in the previously or contemporaneously filed pleading of another party (the "Joined Pleading") by filing and serving a verified "Joinder in Pleading" prior to the hearing on the matter. The Joinder in Pleading must identify the party endorsing the Joined Pleading, the exact title of the Joined Pleading, and the filing date of the Joined Pleading if applicable.

B. The filing of a Joinder in Pleading indicates the endorsing party's adoption of the entire Joined Pleading, without exception. To bring additional facts, issues or other matters before the court, the endorsing party must file a separate or supplemental pleading. The endorsing party shall give notice to all persons entitled to notice of the original Petition, and their attorneys of record, in the same manner as required for an original pleading. A party served with such joinder in pleading may move, demur, or otherwise plead to the joinder in pleading in the same manner as to an original pleading.

C. The Joinder in Pleading must be served upon all parties and interested persons as evidenced by a Proof of Service filed with the court prior to the hearing on the Joined Pleading. If it is the endorsing party's first appearance in the action, the endorsing party must pay the appropriate first appearance fee upon filing the Joinder in Pleading.

Rule 4.61 Notice to Creditors

~~—A. General notice is initially given to creditors by publishing a Notice of Petition to Administer Estate under Probate Code section 8120 ("Notice of Administration").~~

B. A. Notice of Administration must also be given to all known or reasonably ascertainable creditors pursuant to Tulsa Professional Collection Services, Inc. v. Pope (1988) 485 U.S. 478

and Probate Code section 9050. This notice must be filed with the court prior to or with the filing of a petition for distribution.

C.B. In an interim or final accounting, the personal representative must describe the compliance with Probate Code section 9050 and Tulsa. (See rule 4.89.)

Rule 4.71 Commissions on Sale of Real Property

- A. In all cases, a reasonable broker's commission will be determined by the court at the time of confirmation and must be paid from proceeds of the sale confirmed by the court. The court may consider current community practices and standards in making its determination. The court may allow a ~~five~~ **four** percent commission on improved property or 10 percent on unimproved property absent good cause shown for a larger commission.

Rule 4.73 Sale of Specifically Devised Property

- B. The sale may not be approved without the specific beneficiary's consent unless the court finds ~~justification~~ **good cause** for approval without the consent

Rule 4.80 Increased Bid Forms

When there is a successful overbid in open court on a sale of real property, an "Increased Bid in Open Court" SUPCT. form PR-65(10-91) must be completed, signed, and filed with the court before the conclusion of the hearing, otherwise, confirmation is not effective.

Rule 4.88 Bank Letters

- A. All interim accounts by individual fiduciaries must be supported by bank statements or financial statements verifying the balances of accounts at institutions or financial institutions as of the closing date of the accounting. The statements must be the originals, must show the vesting of the account, date of balance and the amount of balance. **If a financial institution will not produce records required by this rule, petitioner must submit a declaration setting forth the due diligence efforts undertaken to obtain the required records.**

Rule 4.116 Receipts on Final Distribution

- A. Receipts for property received on final distribution must be signed by the (1) distributee (2) the attorney-in-fact for the distributee under a valid power of attorney where a true copy of the power of attorney is attached to the receipt and the attorney-in-fact certifies under penalty of perjury that the power of attorney in full force and effect, **unless there is a showing of good cause why the distributee cannot sign the receipt,** or (3) the conservator or guardian of the estate of the distributee, or (4) the personal representative of the estate of the distributee.

Rule 4.118 Supplemental Accountings with Final Discharge

Unless the accounting is waived by the heirs or beneficiaries, supplemental accountings must be submitted for review when more than \$2500 is withheld at the time of the final accountings. **In every case where the requested withholding is \$10,000 or more, petitioner must specify the items for which the withholding is required together with an estimate of each item.** For withheld amounts over \$10,000, a hearing date will be set and notice is required. **the court will set a review date to ensure that a supplemental accounting has been filed and set for hearing. Notice of the hearing on the supplemental account must be given to all persons entitled to notice of the hearing of Final Accounting.** The supplemental accounting must be for the amount withheld only.

Rule 4.119 Temporary Conservatorships

B. The court will not consider the appointment of a temporary conservator ex parte and will set the petition for hearing with a five days notice requirement unless proper showing is made that:

(5) Unless good cause is shown, a report of the Court Appointed Attorney is on file.

Rule 4.120 Petition for Appointment of Conservator; Allegations and Notice Requirements; Supplemental Information

D.Children and grandchildren are relatives within the second degree. The petition must allege the existence or the nonexistence of any children or grandchildren, and their names, addresses, **and relationship to the proposed conservatee must be specified (i.e. "John Smith, adult grandchild")**, and whether they are minors or adults **must be listed.**

H. when the proposed conservatee is, or was, the subject of a Guardianship, the "Petition for Appointment of a Conservator" must include the case number of the prior Guardianship, and the name of the Guardian, the name of the Guardian's and/or minor's attorney(s), if any.

Rule 4.124 Independent Powers: Sale of Residence

D.If conservatee's present or former residence **, including a mobile home or motor home,** is to be sold, authority must first be obtained from the court. The petition must indicate the conservatee's support or opposition, including whether the conservatee opposed the sale in the past, the necessity for the sale, whether conservatee has the ability to reside therein and alternatives to the sale. In addition, the tax issues are to be discussed, particularly the impact of capital gains tax.

Rule 4.129 Appointment of Counsel for Conservatee or Patient

B.Counsel appointed by the court to represent conservatees must prepare and file a written report to the court at least five days prior to the hearing. Said report must:

(6) state that Counsel has reviewed local rule 4.167B herein regarding conflict of interest in a conservatorship proceeding.

Rule 4.132 Investments by Conservator

D. A conservator may petition the court for instructions and authority to make a specific investment **including investments in CDARS.**

Rule 4.133 Substituted Judgments in Conservatorships Probate Code section 2580

A. Where petitioner seeks to establish a trust with conservatorship assets under substituted judgment, the petition must provide that the trust will remain under the continuing jurisdiction of the court and ~~suggest an appropriate bond.~~

~~C. The trust instrument must provide that any trustee be bonded; accountings be filed with the court as directed by the court and in any case the first accounting will be filed by the end of the first year and each subsequent accounting will be filed biennially; and there be no "no-contest clause".~~

Rule 4.138 Fees for Conservators and Counsel

E. The Court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Conservators and Counsel wishing to delay their request for fees to a subsequent accounting period must request and obtain the consent of the Court and include such authority in the prior order approving account.

Rule 4.139 Required Form of Accounts

H. All Conservatorship and Guardianship accounts must disclose the existence of a Trust where the Conservatee or Ward is a beneficiary, the current fair market value of the Conservatee/Ward's interest, whether the Conservator/Guardian is the Trustee, whether counsel for the Petitioner is also the attorney for the Trust, and/or Trustee, whether fees approved in the account are to be paid from the Trust, whether the Conservator, Guardian, Petitioner's attorney receive additional fees from the Trust, and if so, how much.

Rule 4.141

Rule 4.141 Medi-Cal Allegation

~~Reserved for Future Use See rule 4.139F and G.~~

Rule 4.141 Conservatorship Orientation Program

All conservators, excluding limited conservators of the person, who are not Private Professional Conservators as defined by Probate Code Section 2341 must complete an education class as ordered at the time of their appointment as conservator. Classes must be completed within six months of appointment as a conservator, and a certificate evidencing completion must be filed with the Court. Classes must be designed to explain the duties and responsibilities of Conservator of the Person and/or Estate and include information on healthcare, safety, living arrangements, management of assets, accountings and other legal obligations. A list of providers is available in the Probate Business Office. Failure to complete this requirement may be grounds for removal as ordered by the Court. In addition to removal, failure to comply with these requirements may result in the imposition of sanctions.

Rule 4.148 Investigation

(1) Guardianship of the Person, or Person and Estate-Relative.

~~———— (d) Hearings are to be set no sooner than 60 days from filing.~~

(d) At the discretion of the court, an abbreviated report may be ordered in lieu of a full investigation.

Rule 4.152 TIMELY ACCOUNTS

(B) If funds are maintained in a blocked account, the court may order proof of continued deposits in lieu of a full accounting.

Rule 4.156 Fees and Commissions in Guardianships

A. The court will not grant a request for fees without an accounting absent good cause.

B. Fees for court appointed counsel must be requested at the hearing as part of counsel's report.

C. Requests for compensation must be in accordance with California Rules of Court 7.751 and 7.702.

D. The court will not consider fee requests for work performed during a prior accounting period that were not included in the prior account. Guardians and Counsel wishing to delay their request for fees to a subsequent accounting period

must request and obtain the consent of the court and include such authority in the prior order approving accounting.

Rule 4.158 Court Appointed Attorney and Guardian ad Litem

- A. Any party petitioning for appointment of a guardian ad litem ~~must recommend the person to be appointed or must request the court make a selection...~~ **may suggest an independent individual to be appointed or request the court make such appointment. Due to the potential conflicts of interests, parents asserting individual claims or defenses may not serve as guardians ad litem for their children, absent a court order to the contrary.**

Rule 4.160 Petition to Determine Title in Trust Matters

B. Evidence of any transactions ~~+~~ indicating the settlor intentionally removed the asset from, **or added the asset to,** the trust;

Rule 4.162A Special Needs Trusts

A. With respect to Special Needs Trusts and Trusts sent to the Probate Court for review pursuant to San Diego Superior Local Rules, Division II, 2.37(c), the following must be included in the trust:

1. Provisions for appointment of successor trustee on approval of the Probate Court.
2. ~~Bond requirement for all trustees except corporate fiduciaries~~
- ~~3. The requirement of an accounting to the beneficiary, and to the Probate Court if the trust is to be submitted to the Probate Court's jurisdiction.~~
4. ~~3.~~ A payback provision must be inserted as required by 42 USC 1396(d) (4) (a).
5. ~~4.~~ Notice requirements on termination or death of beneficiary, and for any additions to the trust must be included.
6. ~~5.~~ Dispositive provisions must include disposition to residual beneficiaries after payback required by 42 USC 1396(d) (4) (a).

E. A Special Needs Trust or Trust established by Probate Code Sections ~~2580~~ **and 3100** must include the same requirements as listed in The California Rules of Court Section 7.903, 4.133 of these rules and as listed in subsection (A) (1-~~65~~) above.

Rule 4.163 Withdrawal of Counsel of Record

A. Counsel wishing to withdraw from a probate proceeding as counsel of record ~~may file a petition seeking such relief, but must have a citation issued on such motion or petition directing the representative to appear before the court to show cause why said petition or motion should not be granted. 15 days personal service of the citation and copy of the motion is required.~~ **must file and serve a Motion to Withdraw in accordance with the provisions of Code of Civil Procedure section 284 and California Rules of Court section 376.**

~~B. All petitions to be relieved as counsel must include the client's last known address at or near the time of filing.~~

~~C. If the petition is granted, notice of an order relieving counsel must be served on the client and all parties in the absence of a specified waiver of such notice.~~

~~D.~~ **B.** The filing in the case file of a substitution in pro per without prior court approval will not effectively relieve the counsel of record. Such counsel will only be relieved by substitution of

another counsel or by court order upon showing that the person wishing to act in pro per is able to perform the necessary duties and file necessary documents without legal representation. not precluded from doing so by virtue of his or her capacity in the pending proceeding. See, for example, Ziegler v Nickel (1998) 64 Cal.App. 4th 545. Court approval may be obtained by noticed motion.

C. Motions for withdrawal where a bond has been filed by a surety must be accompanied by proof of service of the Notice required by Probate Code section 1213.

4.167B Disclosure of Past and Present Relationships

A. Current and former Conservators, Guardians and their attorneys, as well as any attorney for a Conservatee or Ward, must disclose to the Court, in writing, at the earliest opportunity, the following:

1. Whether the Petitioner in any matter before the Court previously served as a Conservator, or Guardian, for any of the individuals who are a subject of the Petition pending before the Court, and if so, the case number of such Conservatorship or Guardianship.
2. Whether the attorney for the Petitioner in any matter before the Court previously served as attorney for the Conservator, Conservatee, Guardian, or Ward for any of the individuals who are a subject of the Petition pending before the Court, and if so, the case number of such Conservatorship or Guardianship.
3. Whether the attorney for any of the individuals who are a subject of the Petition pending before the Court served as attorney for the Petitioner in any previous capacity.

B. An attorney who would be required to make a written disclosure to a client or former client in accordance with Rule 3-310 of the Professional Rules of Conduct, and the client or former client is, or was, a Conservatee, or Ward, shall provide such written disclosure to the Court at the earliest opportunity.

4.167C Sanctions

A. If any counsel, a party represented by counsel, or a party in pro per, fails to comply with any of the requirements of Division IV of the San Diego Probate Court Rules, the court, on motion of a party or on its own motion, may strike all or any part of any pleadings of that party; or dismiss the action or proceeding or any part thereof; or enter a judgment by default against that party; or impose other penalties of a lesser nature or otherwise provided by law; and may order that party or his or her counsel to pay to the moving party the reasonable expenses in making the motion, including reasonable attorney fees.

B. If a failure to comply with the rules in Division IV is the responsibility of counsel and not of the party, any penalty must be imposed on counsel and must not adversely affect the party's cause of action or defense thereto.

Rule 4.171 Filing of Objections

A person with standing may appear and object orally at the first hearing on any matter before the Probate Court. Thereafter ~~Objections~~, including grounds of opposition, to any petition or other pleading filed in Probate Court must be set forth in writing and filed either as required by statute or, in the absence of specific statutory requirements, by 4:30 pm at least ~~two~~ three court days before the next scheduled hearing date on the petition or pleading. If written objection has not been filed in accordance with this rule, the court will either continue the matter ~~will either be continued to allow compliance with this rule or be decided by the court~~

decide the as an uncontested matter as if no objection had been made, if the court, in its discretion, determines a party has been dilatory in complying with this rule.

CHAPTER 24 LAW AND MOTION AND DISCOVERY MATTERS

Rule 4.24.1 PRELIMINARY DEFINITIONS

An application for relief based upon the Probate Code shall be brought as a petition. An application for relief based upon the Code of Civil Procedure shall be brought as a motion.

Rule 4.24.2 APPLICABILITY OF DIVISION TWO IN PROBATE PROCEEDINGS

Except to the extent the Probate Code provides otherwise, counsel and parties appearing in propria persona must comply with the pertinent sections (as amended from time to time) of Division Two of these Rules and the California Rules of Court beginning at Rule 301 et seq., with respect to demurrers, motions to strike, requests to take judicial notice, motions for summary judgment, and all other pretrial motions. Counsel and parties appearing in propria persona must also consult Department Rules of the various Probate Departments for further requirements.

In addition, the form and format of discovery proceedings in probate are governed by the California Rules of Court beginning at Rule 331 et seq., which will be enforced in all probate discovery proceedings.

Rule 4.24.3 FILING MOTION PAPERS

Unless a specific greater or lesser time is authorized by statute, court rule, or order, moving papers must be filed directly with Probate Services at least 16 court days prior to the scheduled hearing. This rule may be waived by an order shortening time upon ex parte application.

Unless otherwise ordered by the court, motions must be presented to Probate Services prior to the issuance of a hearing date.

Rule 4.24.4 HEARINGS

Unless otherwise authorized by the court, all Probate Law and Motion and Discovery matters in the North County division of the Superior Court will be set for hearing in Department 23 between 2:00 p.m. and 4:00 p.m. on Thursday. All Probate Law and Motion and Discovery matters in the Central division of the Superior Court will be set for hearing in Departments PC and F-10. Once set, the matter may be continued only with a written order of approval from the Court. A matter “continued” by stipulation without court approval will be taken off calendar.

Rule 4.24.5 FILING AND SERVING OPPOSITION OR SUPPORT PAPERS ON MOTIONS

Opposition, joinder and reply papers shall be filed in Probate Services. The deadlines provided by law for serving and filing opposition and reply papers, as provided in Code of Civil Procedure section 1005(b), shall be enforced for all matters. In this regard, the Court is not obligated to, and may not without good cause shown, consider any late-filed or surreply papers in a matter.

Rule 4.24.6 FILING WITHIN 3 DAYS OF HEARING

When papers are filed within three calendar days of the hearing, service on opposing counsel must be by personal delivery (or by FAX when permitted by Rule 2008 of the California Rules of Court).

Rule 4.24.7 FILING OF PROOF OF SERVICE

Proof of service of the moving papers must be filed no later than five calendar days before the time set for hearing.

DIVISION V. FAMILY

Rule 5.62 F. 3. Sanctions. Failure to cancel **or reschedule an appointment at least 2 court days before the appointment** or failure to attend and participate in an FCS appointment may subject the party to monetary sanctions of up to \$1,500.

DIVISION VI. JUVENILE

Rule 6.64.1 Disclosure of Probation Records to Counsel for the Child in a Delinquency Proceeding

The attorney representing a child in a delinquency proceeding may view the child's probation file after obtaining a judge's signature on the JUV-4 Petition to View Records. The probation file may only be copied if the attorney successfully brings a Petition for Disclosure of Juvenile Court Records (JV-570) pursuant to WIC § 827.

Rule 6.93 Continuances

Continuances of hearings will be granted only upon a showing of good cause and in accordance with the procedural requirements of WIC § 682 and CRC **1422 and** 1486. A continuance may be granted following a time waiver by the minor.

Rule 6.95 Requirements for Noticed Motions

(d) Time for service of motion to suppress evidence: Unless a different briefing schedule is set by the court,

1. All moving papers must be filed and served on the opposing party at least 5 court days before the time appointed for the hearing.

2. All papers opposing the motion must be filed and served at least 2 court days before the time appointed for the hearing.

3. All reply papers must be filed and served at least 1 court day before the time appointed for the hearing.

DIVISION VII – APPELLATE

No changes